

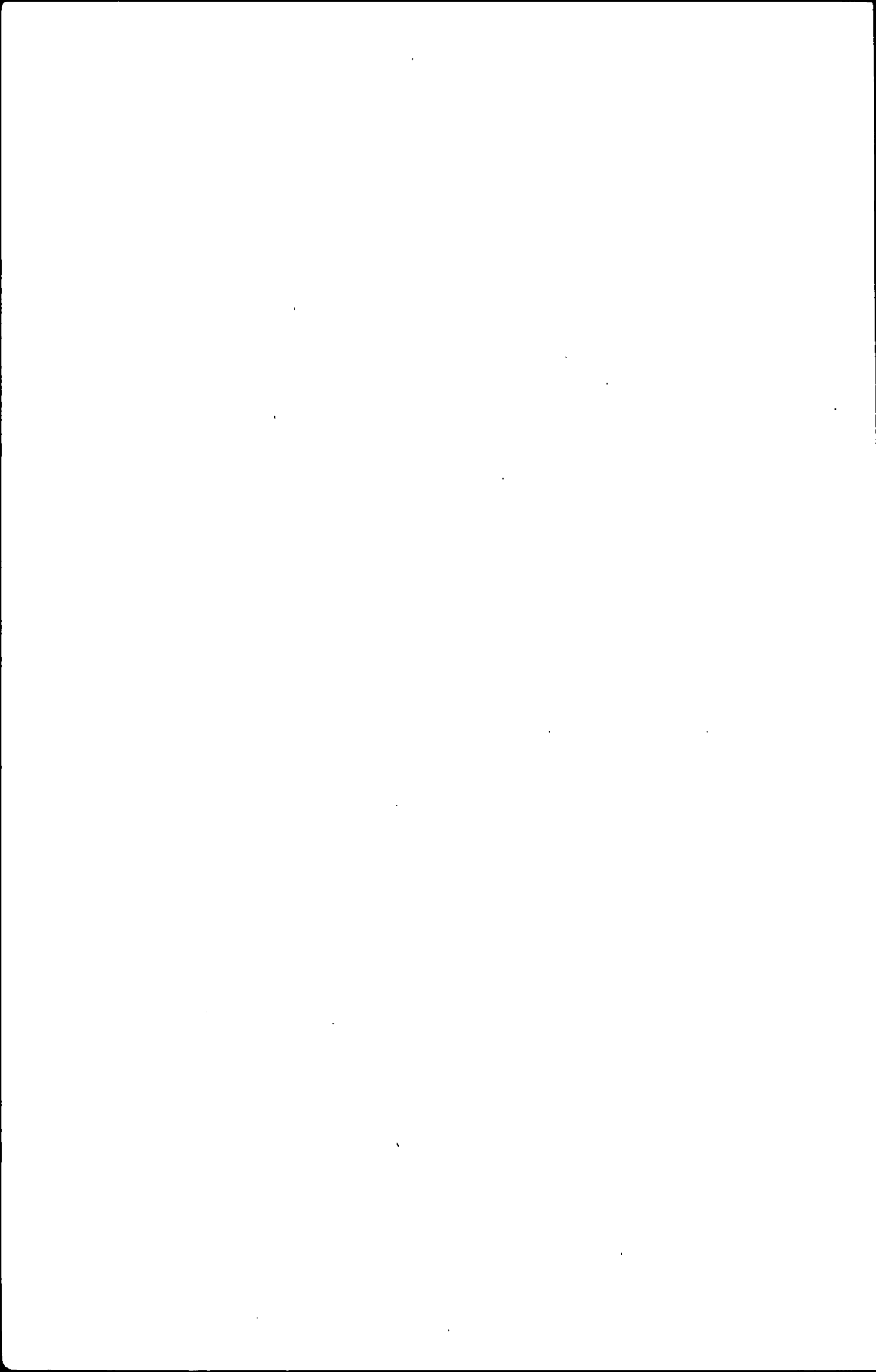
SECOND
INTERIM REPORT

of the

Maryland Tax Survey Commission of 1949

REPORT
on
TAX ADMINISTRATION AND PROCEDURE
and
ALCOHOLIC BEVERAGES TAXES

July 8, 1950



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INTERIM REPORT

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Maryland Tax Survey Commission of 1949

Appointed by

Honorable Wm. Preston Lane, Jr.,
Governor of Maryland

Under Joint Resolutions Nos. 11, 13 and 14

of the

General Assembly of 1949

REPORT

on

TAX ADMINISTRATION AND PROCEDURE

and

ALCOHOLIC BEVERAGES TAXES

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**SECOND
INTERIM REPORT**

of the

MARYLAND TAX SURVEY COMMISSION OF 1949

July 7, 1950

To His Excellency,
Wm. Preston Lane, Jr.
Governor of Maryland.

To the Honorable,
The General Assembly of Maryland.

The Second Interim Report of the Maryland Tax Survey Commission of 1949 is respectfully transmitted herewith. This Report covers (1) the important subject of tax administration and procedure and (2) taxes imposed by the State and several of its political subdivisions upon the manufacture, distribution and sale of alcoholic beverages.

The Commission is continuing its studies of the Maryland gross receipts tax, tax inequities inherent in the Maryland tax structure and related matters. As these studies are completed they will be forwarded in due course.

Respectfully submitted,

RICHARD W. CASE,
Chairman

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TAX ADMINISTRATION AND PROCEDURE

PRELIMINARY STATEMENT

All systems of taxation can be divided into two broad subdivisions. The first deals generally with the operative acts which occasion tax liability. The second deals generally with the methods by which taxes are collected. For convenience, the second of these two subdivisions will be identified in this report as "Tax Administration and Procedure."

Effective tax administration and procedure are absolutely essential to any satisfactory system of taxation. Without adequate collection methods no appreciable amount of revenue would be produced by the finest laws defining tax liability. In addition, it is the administrative and procedural aspects of all tax systems which brings the government into tax contact with its citizens. For these reasons not only are appropriate tax laws necessary but also tax administration and procedure must be both adequate to meet the needs of government and equitable to all taxpayers who are required to contribute their fair share in support of those needs.

In past Maryland studies of taxation, emphasis usually has been placed upon the question of determining adequate and fair bases upon which to place tax liability. Excepting the report of the *Maryland Tax Revision Commission* of 1939, there has been no official study of the problems occasioned by tax administration and procedure in this State.¹ This

¹ Ten special state commissions have been appointed in the past to investigate the Maryland tax structure. The earliest of these investigative bodies was the *Maryland Tax Commission*, or "Poe Commission", appointed pursuant to Md. Laws 1886, c. 488. In recent years tax study commissions have been appointed approximately at five year intervals. Depending on the reasons for their appointment, these commissions have sought variously to eliminate inequities and discriminations in Maryland taxes, to recommend methods of raising revenues to support State activities, to revise, clarify and recodify laws imposing taxes, to eliminate obsolete tax laws, to provide for the sharing of State revenues with the localities and to study the problems occasioned by tax administration and procedure. Of the several bodies, the *Maryland Tax Revision Commission* of 1939 alone has made a comprehensive study of the matter under consideration in this report. The *Commission for the Revision of the Taxation System of the State of Maryland and the City of Baltimore* (1913), known as the "Baker Commission", also dealt with the problem to some extent.

Commission believes, however, that tax inequities may be created and perpetuated through an outmoded system of administration as effectively as by means of inequitable laws defining tax liability.

At the outset, the Commission desires to define the scope of this section of its report. Under the heading, "Tax Administration", the problem of assessment is considered. The term "assessment" here is used in a broad sense and means the finding of tax liability by the governmental agency assigned to such work.² Under the heading "Tax Procedure", the question of tax litigation is considered. By "tax litigation" is meant the method by which taxpayers may have their "assessments" tested by a fair and impartial tribunal. This definition includes the right of appeal. Finally, this section of the Commission's report relates only to taxes imposed for revenue purposes and therefore is not concerned with either licenses (the subject of the Commission's first interim report),³ or with other imposts levied for health or regulatory reasons.

TAX ADMINISTRATION IN MARYLAND

Recommendations

1. A new state agency, to be known as the State Department of Revenue, should be created. This department would have the following functions:

- (a) The assessment of all taxes now assessed by the State Comptroller.**
- (b) The assessment of all taxes now assessed by the State Tax Commission.**

² In a more restricted sense, "assessment" denotes the listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. It should be borne in mind; moreover, that this report does not deal with the question of the method by which real and personal property are assessed in this State. That subject is being studied currently by a sub-committee of the Commission and a report will be made relative thereto at a later date.

³ *Interim Report, Report on Licenses, MARYLAND TAX SURVEY COMMISSION OF 1949 (February 5, 1950).*

- (c) The supervision of local property assessments which now is conducted by the State Tax Commission.
- (d) The assessment of the Maryland estate tax and the Maryland inheritance tax.
- (e) The performance of various duties now imposed upon the State Tax Commission by the general corporation laws of the State.
- (f) The assessment of the insurance premium tax which now is assessed by the State Insurance Department.

2. The personnel in the offices of the State Comptroller, the State Tax Commission and the State Insurance Department, now performing the functions outlined above, should be placed under jurisdiction of the State Department of Revenue.

3. The State Department of Revenue should be headed by a director who should (a) be appointed by the Governor with the advice of an advisory body consisting of the president of the Maryland State Bar Association, the president of the Maryland Bankers Association and the chairman of the Commission on Governmental Efficiency and Economy, Inc., (b) hold office for a term or terms of nine years, provided that no director shall hold office after reaching the age of seventy years, and (c) be removed from office only for cause after an opportunity for a hearing before the Board of Public Works.

4. The State Department of Revenue should be composed of various bureaus, each bureau to be headed by a merit system employee, and each bureau to perform such functions as may be assigned to it by the director.

5. The director should be authorized to determine assessment methods and practices of all agencies collecting State taxes, and all such agencies should report annually to the director concerning such collections.

Tax administration in Maryland is characterized by wide diffusion of responsibility. No less than 11 boards or agencies

take part in the collection of State revenues. These agencies and the taxes they administer are as follows:

1. *State Roads Commission:*
Outdoor advertising.
2. *Clerks of Circuit Courts of Counties:*
Recordation tax.
3. *Clerk of Superior Court of Baltimore City:*
Recordation Tax.
4. *Commissioner of Motor Vehicles:*
 - (a) Mileage tax (interstate public passenger motor vehicles).
 - (b) Public freight motor vehicles (intra-state).
 - (c) Public passenger motor vehicles (intra-state).
 - (d) Registration fees.
 - (e) Titling tax.
5. *Comptroller:*
 - (a) Admissions and amusements tax.
 - (b) Alcoholic beverages (excise taxes).
 - (c) Gross receipts tax (one railroad only).
 - (d) Income Tax.
 - (e) Motor vehicle fuel tax.
 - (f) Sales tax.
 - (g) Use Tax.
6. *County Commissioners and County Appeal Tax Courts:*
Property taxes (real and personal property except that assessed by State Tax Commission).
7. *Department of Assessments:*
Property taxes in Baltimore City (real and personal property except that assessed by State Tax Commission).
8. *State Insurance Department:*
Insurance premiums tax.

9. *Registers of Wills:*
 - (a) Tax on commissions of Executors and Administrators.
 - (b) Direct and collateral inheritance tax.
 - (c) Maryland estate tax.
10. *State Racing Commission:*
 - (a) Daily license fee.
 - (b) Tax on pari-mutual wagers.
11. *State Tax Commission:*
 - (a) Bonus tax.
 - (b) Share tax.
 - (c) Tax on savings bank deposits.
 - (d) Franchise tax.
 - (e) Gross receipts tax (except one railroad).
 - (f) Property taxes, as follows:
 - (i) Tax on distilled spirits.
 - (ii) Personal property of corporations.
 - (iii) Operating property (except land) of public utilities.
 - (iv) Rolling stock.

The reasons which occasioned the diffusion of tax administration in Maryland are at least as numerous as the agencies to which have been committed the responsibility of tax collection. No useful purpose would be served by discussing such reasons in this report. Suffice it to say that some reasons were based on precedent while others were prompted by political considerations of the moment. However, none of these reasons placed primary emphasis on economy of operation or efficiency of fiscal management.

The antithesis of the present diffused system of tax administration which obtains in Maryland is an integrated system of tax administration organized on a centralized basis.⁴ As stated by the *Maryland Tax Revision Commission*

⁴ For a scholarly statement of the lack of coordination in the administration of Maryland taxes, see Richardson, *License Taxation in the Maryland Revenue System*, 17 TAX MAGAZINE, 210, 284 (1939).

of 1939, however, ". . . central administration is perhaps undesirable with respect to all State taxes".⁵ As put by that Commission, the issue is ". . . whether centrally administered taxes should be handled piecemeal or as a unit".⁶ Since the *Maryland Tax Revision Commission* of 1939 reported, the issue has been intensified and resolved to some extent in favor of centralization by the advent of centralized administration in such important fields as public utilities taxation, the sales tax and the use tax.⁷

Many states that previously operated under a tax administrative system characterized by wide diffusion of responsibility have today integrated their tax collection activities under a single bureau. Before adoption of centralized and integrated systems of taxation, eight of these states maintained revenue systems not unlike that now prevailing in Maryland.⁸ As a consequence, the present tax administrative organizations of these states are of great interest to the Commission.

The present laws of each of these states make provision for a department of taxation or revenue in which is concentrated responsibility for administering all or substantially all revenue laws of the state.⁹ These departments are headed by a single official designated "director" or "commissioner",

⁵ *Report, MARYLAND TAX REVISION COMMISSION OF 1939*, p. 1.

⁶ *Ibid.*, p. 1.

⁷ A result of a recommendation of the *Maryland Tax Revision Commission of 1939* has been the placing of responsibility for assessment of operating property, except land, of railroads and other public utilities and contract carriers upon the State Tax Commission. Enactment of the Retail Sales Tax Act and the Maryland Use Tax in 1947 has concentrated in the Office of Comptroller the responsibility for administering the most productive of State taxes.

⁸ These states are Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, Ohio and Wisconsin.

⁹ Kentucky, "Department of Revenue", KY. REV. STAT. c. 131 (Baldwin, 1943 and Cum. Supp. 1950); Louisiana, "Department of Revenue", LA. GEN. STAT. §7789.26 *et seq.* (Dart, Cum. Supp. 1949); Massachusetts, "Department of Corporations and Taxation", ANN. LAWS MASS. c. 14, §1 *et seq.* (Michie, 1944 and Cum. Supp. 1949); Michigan, "Department of Revenue", MICH. STAT. ANN. §7.657(1) *et seq.* (Rice, 1950); Minnesota, "Department of Taxation", MINN. STAT. ANN. c. 270 (West, 1947 and Cum. Supp. 1949); New Jersey, "Division of Taxation" in Department of Taxation and Finance, N. J. STAT. ANN. §52:27B-48 *et seq.* (West, Cum. Supp. 1949); Ohio, "Department of Taxation", OHIO GEN. CODE ANN. §1464 *et seq.* (Page, 1946 and Cum. Supp. 1949); and Wisconsin, "Department of Taxation", WIS. STAT. c. 73 (1949).

such official usually being appointed by the governor with the advice and consent of the Senate.¹⁰ The tenure of the director or commissioner ranges from three to six years. In New Jersey the appointment is for the duration of the appointing governor's term, while in Michigan this official's term is of indefinite duration. Compensation for these officials, where fixed by statute, varies from \$5,000 per annum in Ohio to \$10,000 per annum in New Jersey.

The director is given broad discretion in the organization of the department. In some of the States, virtually all matters relating to organization are subject to his discretion.¹¹ In other instances, the legislature prescribes the general organizational pattern of the department and vests the director with ample powers to supplement that pattern.¹²

The Commission is of the opinion that strong and compelling reasons exist why State revenue measures which are at present centrally assessed should, in general, be administered by one State agency. These reasons include the following:

(1) Administration by one agency would fix responsibility for collection of State revenues in a single department and thereby eliminate the possibility of uncertainty or shifting of responsibility from one State agency to another.

(2) Administration by one agency would be the final step regarding revenues in completing the already existing policy of the State which places responsibility for the State's fiscal affairs upon the executive.¹³

¹⁰ The Commissioner of Revenue is appointed by the Michigan Civil Service Commission. MICH. STAT. ANN. §7.657(2) (Rice, 1950).

¹¹ See MICH. STAT. ANN. §7.657(6) (Rice, 1950); N. J. STAT. ANN. §52:27B-51 (Cum. Supp. 1949).

¹² See KY. REV. STAT. §131.050 *et seq.* (Baldwin, 1943); ANN. LAWS MASS. c. 14 §1 (Michie, 1944).

¹³ The adoption of the Budget Amendment to the Maryland Constitution in 1916 (Art. III, Sec. 52), placed upon the Governor primary responsibility for the financial planning for the State. Section 52, as amended by Md. Laws 1947, c. 497, and ratified by the electorate in 1948, requires the Governor to submit annually to the General Assembly a budget for the next ensuing fiscal year, setting forth in detail an estimate of revenues and proposed expenditures for such year. Items of proposed disbursements may not be increased by the Legislature other than by way of a supplementary appropriation which must carry its special tax.

(3) Administration by one agency would permit free exchange of information between the various tax administrators, thereby closing avenues of tax avoidance available under the present system.¹⁴

(4) Administration of assessments and collection of State revenues by one agency would minimize the possibility of political consideration.¹⁵

(5) Administration by one agency would eliminate duplication of investigation and reporting activities which is currently performed on a multi-agency system in Maryland.¹⁶

(6) Administration by one agency would permit taxpayers to settle all of their State revenue responsibilities in one place rather than on a piecemeal basis at the headquarters of two or more State agencies.¹⁷

¹⁴ For example, adequate administration of the property tax laws requires recourse to information as to inventory, furniture, fixtures and equipment contained in corporate income tax and sales tax returns. To obtain this information the State Tax Commission must turn to the Income Tax Division of the Comptroller's Office. The necessity of obtaining this information through channels, together with the inconvenience of sending personnel several city blocks to obtain it at all, does not stimulate utilization of available information. To ascertain whether all corporations liable to the corporate income tax have filed income tax returns requires a search of records maintained by the State Tax Commission. Only through unnecessary inconvenience and effort have several corporate income tax evaders been brought to task by these two agencies.

¹⁵ It is not to be understood from this that the Commission has found as a fact that political assessments have been made. The Commission is emphasizing merely that while responsibility for making assessments in important tax fields rests with elected officials, the possibility of political assessments is present. Accordingly, the Commission believes that removal of the "possibility" is a step in the direction of sound governmental administration.

¹⁶ Whether or not individual investigators are capable of conducting investigations connected with one or more taxes depends largely on their individual qualifications and backgrounds. Despite this fact, however, it is believed many investigators may solicit and obtain valuable information concerning tax liability in fields other than those to which ordinarily assigned. Recent experience in the Sales Tax and Income Tax Divisions of the Comptroller's Office is illustrative of this practice.

¹⁷ Because of the absence of centralized responsibility for administration of taxes, the taxpayer frequently is compelled to negotiate with several agencies, at times with divisions of a single agency located many miles apart, as, for example, the Alcoholic Beverages Division of the Comptroller's Office, located in Baltimore City, and the Gasoline Tax Division of the same office, which makes its headquarters in Annapolis. Unified administration would go far to overcome this obvious deficiency. A complete solution to this problem unquestionably requires a single State Office Building wherein the office of the Director of the Department of Revenue and its component bureaus or divisions may be physically located.

(7) Administration by one agency would result in simplification and consolidation of various reports and forms now required from taxpayers by the several responsible State departments.¹⁸

(8) Administration by one agency would produce economy of office operation by making possible the joint use of office personnel and machines, many of which are duplicated at present.¹⁹

(9) Unification would permit more effective revenue planning since it would form a basic element of revenue administration.

The Commission after canvassing the possibility of assigning to an existing State agency the responsibility of assessing and enforcing certain State revenue measures which currently are centrally administered, decided that the two most nearly qualifying are the Office of the State Comptroller and the State Tax Commission. After careful consideration, however, this Commission decided that responsibility for assessing and enforcing the centrally administered taxes should not be placed under either of these two agencies.

The Comptroller is an elected State official who, together with the State Treasurer, compose the Treasury Department.²⁰ With specific reference to the collection of State

¹⁸ The corporate income tax form contains a schedule from which the corporate franchise tax may be computed. Yet, because the latter tax is administered by the State Tax Commission, the corporate taxpayer must file an income tax return with the Income Tax Division and a franchise tax return with the State Tax Commission. A separate franchise tax return would be unnecessary under the proposed plan. Moreover, a unified system of assessing taxes would facilitate the development of tax return questionnaires that would minimize tax avoidance and evasion.

¹⁹ Assessment and collection of taxes involve intricate accounting procedures efficiently undertaken only through use of expensive machines and skilled personnel. While some machines (and to a limited extent, operating personnel also) are of a single purpose variety and continuously in use within existing agencies, such is not always the case, and both personnel and machines could be used with advantage by other agencies. No logical reason exists why the State Tax Commission should maintain photostatic equipment for use on the average of two to four days a month, while similar apparatus is maintained by the Comptroller's Office for less than full-time use. Nor is there supportable reason why each major tax assessing agency should maintain separate hearing rooms (in one case inadequate) and other office facilities. Numerous other duplications are equally illogical.

²⁰ Md. CONST., Art. VI, Sec. 1.

revenues, the Maryland Constitution provides that it shall be the duty of the Comptroller to superintend generally the fiscal affairs of the State, to prepare and digest plans for the improvement and management of State revenues, to make reports dealing with estimates of State revenues and expenditures, and to enforce the prompt collection of State taxes by adjusting and settling the public accounts of various tax collection agencies and receivers of State revenues.²¹ In addition, the Comptroller is authorized to superintend generally State revenue deposits and to grant under regulations prescribed by law all warrants for monies to be paid out of the State treasury.²²

While the Office of the State Comptroller now administers the most productive State taxes, such duties were not intended for that office by the framers of the Constitution. As originally contemplated, the Comptroller was to be concerned with State revenue *policy* and not with tasks of tax collection and assessment. Moreover, it would seem that the principal duty imposed upon the Comptroller by the Constitution is the handling and disbursing of State revenues after they have been obtained rather than the actual securing of such revenues in the first instance.²³ For these reasons the Commission is of the opinion that the duty of assessing and enforcing centrally administered State revenue measures should not be committed to the State Comptroller.

Unlike the Office of the State Comptroller, the State Tax Commission was created specifically to supervise the details of tax assessments and the collection of revenues.²⁴ Prior

²¹ MD. CONST., Art. VI, Sec. 2.

²² *Ibid.*

²³ An authoritative statement to this effect was recently made by the Maryland Court of Appeals in *Duval v. Lacy*, reported in the Daily Record, April 21, 1950. This case involved an unsuccessful mandamus proceeding which sought on constitutional grounds to prevent the removal of the Income Tax Division of the Comptroller's Office from Annapolis to Baltimore.

²⁴ In recommending the creation of the State Tax Commission, the *Commission for the Revision of the Taxation System of the State of Maryland and City of Baltimore* (1913) was concerned primarily with assessment of real estate. A fundamental obligation of the State Tax Commission involved equalization of the "... unscientific and faulty assessments made by unsupervised local assessors. . . .". *Report*, p. 10.

to 1914 the agency administering centrally assessed taxes in this State was the Office of the State Tax Commissioner.²⁵ Lack of centralized control under the Office of the State Tax Commissioner, however, prompted the *Commission for the Revision of the Taxation System of the State of Maryland and the City of Baltimore* (the Baker Commission) to observe in 1913 that:

"From our observation and investigation we find the people in all parts of the State united in the opinion that most of the defects in our system of taxation and collection are due to a lack of central control."²⁶

Based upon recommendations of the *Baker Commission*, the General Assembly of Maryland in 1914 enacted legislation creating the State Tax Commission.

Had the authority of the State Tax Commission been limited by Chapter 841 of the Acts of 1914 to the details of assessing and collecting State taxes, the solution to the problems now under discussion would be simple. But such was not the case. The State Tax Commission was established not only as a tax assessing and collecting agency, but also as a judicial agency with power to hear and determine tax appeals.

As indicated above, the State Tax Commission assesses many of the centrally administered taxes. If a taxpayer is dissatisfied with a tentative assessment made by the Commission he is entitled to a hearing.²⁷ But the agency sitting in judgment of the assessment is the very agency which made it originally—the State Tax Commission. Such a system does not commend itself to the members of this Commission.

The undesirable situation of combining within the State Tax Commission the power to assess and the power to judge is magnified when the system of valuing real estate (and

²⁵ Md. Laws 1878, c. 178, created the office of the State Tax Commissioner within the Treasury Department. The Commissioner was clothed with tax assessing duties previously vested in the Comptroller.

²⁶ *Report*, p. 9.

²⁷ ANN. CODE MD., Art. 81, Sec. 24 (1939).

some tangible personal property) is considered. Such properties are, in part, valued by local assessors. The inequitable condition is not readily apparent, therefore, until the relationship between the local assessors and the State Tax Commission is considered and the method of procedure in all real and certain personal property tax cases is understood.

Local tax assessors (the supervisor of assessments and his assessors) are for all practical purposes under control of the State Tax Commission. The Commission fixes general policy to guide the local assessor in the performance of his duties.²⁸ The Commission specifies methods of assessment. It fosters the dissemination of information regarding best assessment practices.²⁹ It participates in the selection of assessing personnel and in the establishment of their compensation.³⁰ It has the power to remove a local assessor for cause.³¹ In many respects, therefore, the assessor looks to the State Tax Commission as his superior, and the State Tax Commission considers the local assessor as the instrumentality by which its State-wide policies are put into effect.

Tax values on real estate and certain tangible personal property are recommended to the original assessing authority by the local assessor. A taxpayer may protest such recommendations made either upon his own or upon his neighbor's

²⁸ ANN. CODE MD., Art. 81, Sec. 175 (Supp. 1947).

²⁹ To assist in this function, the State Tax Commission sponsored *The Maryland Supervisors and Assessors Association, Inc.*, in 1944. This organization, since 1947 the *Maryland Association of Assessing Officers, Inc.*, is a non stock, non profit corporation composed of all supervisors of assessments and local assessors in the State, and has as its primary objective the attainment of equality and uniformity in property assessments throughout the State. The compilation of the Official Manual for Tax Assessors, adopted by the State Tax Commission as of January 1, 1949, as an official assessing guide, is an example of its efforts in this direction.

³⁰ Locally assessable property in each county and Baltimore City is assessed under the supervision of the Supervisor of Assessments of the subdivision. This official is appointed by the State Tax Commission from nominees of the Boards of County Commissioners or Mayor and City Council of Baltimore City. Salaries of these officials are, within limits, fixed by the State Commission, and they are removable by the Commission at any time for cause. Where necessary, assessors are appointed to assist the local supervisors. These persons are examined by the State Tax Commission and are removable by that body after hearing and for cause. ANN. CODE MD., Art. 81, Secs. 176-180 (1939 and Supp. 1947).

³¹ See f.n. 30, *supra*. Filing of certificate of candidacy for political office has been held sufficient grounds for removal. *Rogan v. Cook*, 188 Md. 345 (1947).

property.³² Such protests are heard by the county commissioners (in two counties by the County Appeal Tax Court)³³ or by the Board of Municipal and Zoning Appeals in the City of Baltimore. From the actions of these boards any party in interest may appeal to the State Tax Commission.

A hearing on the assessment originally made by the local authority is given by the State Tax Commission to any person taking an appeal to that body. In such cases, however, the real parties in interest are the taxpayers on the one hand and the local assessor on the other.³⁴ The inevitable result is, therefore, that the State Tax Commission sits in judgment on its own theories, policies and instructions in attempting to decide the issues in the usual property tax assessment case. In addition, one party in the case is, realistically speaking, its own employee.

This Commission believes it is unsound to combine the duty of making assessments or the responsibility of establishing assessment procedure with the duty of hearing and determining cases which are the direct or indirect product of those assessments or assessment procedures. For the reasons stated the Commission recommends that the State Tax Commission be relieved of responsibility for (a) making original assessments, and (b) establishing administrative policy under which assessments are made by others.

The Commission concludes, therefore, that no State agency exists upon which should be placed the responsibility of assessing and collecting centrally administered taxes. The Commission recommends that a new agency, to be known as the State Department of Revenue, be created to perform

³² ANN. CODE MD., Art. 81, Sec. 190 (1939). See also Board of County Commissioners v. Buch, 58 A. 2d 672 (1948).

³³ Md. Laws 1943, c. 717, Secs. 186-186B, codified as ANN. CODE MD., Art. 81, Secs. 186-186B (Supp. 1947), authorized the County Commissioners of Baltimore and Montgomery Counties to establish Appeal Tax Courts in those counties. Creation of these Appeal Tax Courts relieved the County Commissioners of the two counties of tax appeal and assessment duties.

³⁴ The local assessor is, of course, representative of the interests of the political units that will benefit from expenditures made from taxes collected. In most instances the real issues in dispute involve the methods and principles employed in valuing property.

these functions. The assessment duties of this agency should include those presently conducted by (a) the State Comptroller, (b) the State Tax Commission, (c) the Registers of Wills (with the exception of the tax on commissions) and (d) the State Insurance Department. In addition, the State Department of Revenue should (a) perform the various duties now imposed upon the State Tax Commission by the general corporation laws of the State, and (b) supervise all local property assessments and assessment procedures.

The State Department of Revenue should be headed by a director who should be paid a salary comparable to that received by heads of other important State agencies. To assist in the selection of the most qualified person for this position, it has been recommended that the appointment be made by the Governor with the advice of the president of the Maryland State Bar Association, the Chairman of the Commission on Governmental Efficiency and Economy and the president of the Maryland Bankers Association.

The Commission has recommended that the term of office of the director of the State Department of Revenue should be nine years. Before making this recommendation, the Commission considered the possibility of (a) an unlimited term and (b) a term coterminus with that of the Governor. Strong arguments can be advanced for either of these two propositions. However, the Commission believes that a term of nine years not only will insulate, as far as possible, the Director of the State Department of Revenue from outside pressure but also will insure against the possibility of overbearing bureaucracy.

The recommendation concerning the retirement of the Director of the State Department of Revenue is consistent with the State retirement system. The recommendation permitting the Board of Public Works to remove the director after hearing for cause will enable the Board to prevent a continuing abuse of office. By use of the term "for cause",

the Commission means sufficient reason affecting the ability or fitness of the incumbent to perform the duties of his office.

The personnel of the Department should consist primarily of those employees now serving under the State Comptroller, the State Tax Commission and the State Insurance Department whose duties consist of assessing and collecting the various taxes handled by those agencies. The personnel of the Department should be composed also of those persons currently under the jurisdiction of the State Tax Commission who administer the Maryland Corporation Laws and who direct local property assessments and assessment procedures. Such personnel should be merit system employees, a requirement which would occasion little change since all such personnel are presently within the State merit system.

The Commission recommends that no change be made at this time in the administration of taxes on outdoor advertising, taxes on the commissions of executors and administrators, taxes presently administered by the State Racing Commission, the recordation tax and taxes presently administered by the Commissioner of Motor Vehicles.

The tax on outdoor advertising is primarily a regulatory measure, and its administration should be left with the State Roads Commission. The tax on commissions of executors and administrators is peculiarly adaptable to administration by the registers of wills, and it is recommended that the administration of this tax be continued by the registers. The recordation tax is in essence a local measure, the revenue from which is distributed to the local political subdivisions.³⁵

³⁵ ANN. CODE MD., Art. 81, Secs. 220, 221 (Supp. 1947). This tax is imposed on the recordation of every instrument conveying title to real property or creating liens or encumbrances upon real or personal property. Proceeds from this tax were originally allocated to the State. Md. Laws Spec. Sess. 1937, c. 11, Sec. 214. Because of the highly local character of recordation transactions, the *Maryland Commission on the Distribution of Tax Revenues* (1946), the "Sherbow Commission", recommended that proceeds of the tax imposed on instruments involving property located wholly within a subdivision should be allocated to such subdivision. This allocation was adopted in Md. Laws 1947, c. 484. The reasoning of the "Sherbow Commission" and the simplicity of administering the recordation tax argue against central administration.

No useful purpose would be accomplished by centralizing administration of this tax.

Taxes collected by the State Racing Commission are imposed upon a regulated industry having problems totally different from those of general business organizations.³⁶ The taxes administered by the Commissioner of Motor Vehicles produce funds dedicated by law to be spent on the highways of the State or to service State roads bonds. For the reasons stated the Commission is of the opinion that taxes administered by the State Racing Commission and the Commissioner of Motor Vehicles should continue to be administered by those agencies.

Regarding administration of inheritance and estate taxes by the State Department of Revenue, it is recommended that every executor, administrator or other person making distribution of property of a decedent be required to file a return showing the property distributed, its value and the names of recipients. Tax liability then would be determined by the appropriate bureau of the State Department of Revenue which would certify the assessment to the appropriate register of wills for collection. The registers of wills thereby will remain the agents of the State for the collection of the inheritance tax, the only change being that the assessment of the tax will be made by the central bureau.³⁷

The Commission recommends that the insurance premiums tax be assessed by the State Department of Revenue

³⁶ The Racing Commission also administers the "Racing Fund". Each licensee is required to remit one-half of one percentum of the amount wagered during every racing meet to the Commission. To the extent approved by the Commission, each licensee may expend for repairs and improvements to his racing plant such portion of the "Racing Fund" as does not exceed its contribution to the fund. Unspent and unobligated contributions revert to the general funds of the State three years from the last day of the year of collection. ANN. CODE MD., Art. 78B, Sec. 12 (Supp. 1947).

³⁷ For receiving and paying over any inheritance tax due the State the several registers of wills are allowed a commission of 10% of said tax. A fee of 25% upon the tax on executors' and administrators' commissions is also retained by the registers. ANN. CODE MD., Art. 36, Sec. 28 (Supp. 1947). It is contemplated these fees will continue to be deducted by the registers under centralized assessment. No fee or commission is retained by the registers in the case of the Maryland Estate Tax.

rather than by the State Insurance Department. This practice is followed in most progressive states, including the great insurance states. It is believed that such a change will not only strengthen tax administration in Maryland but also permit the State Insurance Department to concentrate on regulation and rating.

Although the Department of Revenue will not be concerned directly with the duties of assessing and collecting all State taxes, the Commission believes the Department should be given some degree of control and supervision over such matters. It is recommended, therefore, that all State agents and agencies collecting State taxes should make annual reports of such collections to the Department of Revenue. In addition, the Department should be given the power to determine the assessment methods and practices of all agencies collecting State taxes. Finally it is recommended that the Department of Revenue should make annual reports to the State Comptroller, in which there should be set forth pertinent information regarding tax assessments and collection practices in this State, together with suggestions for the improvement of those practices.

The recommendations made above do not constitute criticism of the present administration of the Office of the State Comptroller, the State Tax Commission, the State Insurance Department or the Registers of Wills. It is the Maryland structure of tax administration rather than its operation which is the subject of criticism in this report. A system of tax administration essentially weak can never produce a State revenue position entirely strong. For this reason, the Commission believes that the recommendations made in this report should be adopted.

TAX PROCEDURE IN MARYLAND

Recommendations

1. The State Tax Commission should be abolished and its judicial functions transferred to a tribunal to be known as the Maryland Tax Court. The characteristics and functions of the Maryland Tax Court are explained below.

2. Appeals should be allowed to the Maryland Tax Court by any party in interest from property assessments made by either the County Commissioners, the County Appeal Tax Courts, the Board of Municipal and Zoning Appeals or the Department of Revenue. No bond should be required as a prerequisite to taking such appeals.

3. Appeals should be allowed to the Maryland Tax Court by any party in interest from all other tax assessments made by any State agency required by law to enter such assessments. A bond equal to the proposed assessment should be required as a prerequisite to taking such appeals.

4. Appeals should be allowed to the Maryland Tax Court by any party in interest from the action of any State board or agency on a claim for refund filed with such board or agency. The existing provisions of State law should control the filing of claims for refund, and appeals from actions taken on such claims should be taken to the Maryland Tax Court in the same manner as refund appeals currently are taken to the State Tax Commission.

5. Appeals should not be allowed to the Maryland Tax Court unless and until the taxpayer has exhausted his administrative remedies before the board or department which entered the assessment originally.

6. Appeals should be allowed from the Maryland Tax Court to any party in interest directly to the Court of Appeals of Maryland. Such appeals should be taken on the record made before the Maryland Tax Court whose decision

should be affirmed if supported by correct legal principles and substantial evidence.

In general, tax procedure in Maryland revolves around the judicial functions of the State Tax Commission. Much has been said in the first part of this report concerning these activities. Consideration of additional material concerning the Tax Commission is necessary, however, to bring the recommendations made above into focus.

The State Tax Commission is composed of three members appointed by the Governor for staggered terms of six years. Not more than two members of the Commission may be of the same political party, and one must be a resident of the Western Shore, one of the Eastern Shore and one of Baltimore City.³⁸

The trial of tax cases before the Commission (whether acting in its original or appellate jurisdiction) is usually conducted in an informal manner. Technical rules of evidence are not binding in such cases.³⁹ A stenographic record of proceedings may be obtained only if the taxpayer litigant provides for it, there being no obligation on the part of the Commission to furnish a reporter or court stenographer.⁴⁰ In some instances only one Commissioner may hear a case which later will be the subject of an opinion by other Commissioners who did not hear it.⁴¹ Prayers may be offered by the taxpayer requesting rulings on questions of law and these prayers may be ruled upon by the Commission.⁴² Written

³⁸ ANN. CODE MD., Art. 81, Sec. 167 (1939).

³⁹ ANN. CODE MD., Art. 81, Sec. 192 (1939).

⁴⁰ *Ibid.* That this provision may constitute a pitfall for the unwary, see *Postal Tel. Cable Co. v. Harford Co.*, 131 Md. 96 (1917).

⁴¹ ANN. CODE MD., Art. 81, Sec. 171 (1939). In unusual circumstances this provision may cause difficulty. For example, in a proceeding before the State Tax Commission involving an appeal from deficiency assessments by the Comptroller in an income tax matter the one Commissioner present throughout the hearing resigned before the Commission reached its decision. Without benefit of a stenographic transcript of the proceedings, and upon the basis of very limited attendance of the hearing by another Commissioner, the Commission affirmed the Comptroller's decision. Upon appeal to the Baltimore City Court, the presiding judge offered to return the case to the Commission as "irregularly decided". Although appellant brought this irregularity to the attention of the Court of Appeals, it evoked no comment. See Brief for Appellant and opinion of Court of Appeals in *Fleishmann v. Lacy*, 62 A. 2d 561 (1948).

⁴² ANN. CODE MD., Art. 81, Sec. 193(b) (1939).

opinions are frequently filed by the Commission, although not in all cases.⁴³

Various methods may be used to bring a tax case before the State Tax Commission. The methods discussed in the first part of this report are (1) appeals to the Commission from an assessment entered by the Boards of County Commissioners, the County Appeal Tax Courts, or the Board of Municipal and Zoning Appeals, and (2) protests entered to proposed assessments made by the Commission itself. In addition, appeals to the State Tax Commission may be taken from income tax assessments made by the State Comptroller.⁴⁴

No appeal can be taken to the State Tax Commission from tax assessments based on the great majority of State revenue acts. Under existing law no appeal can be taken to the State Tax Commission from the assessment of the following taxes:

1. Recordation tax.
2. Mileage tax (interstate passenger motor vehicles).
3. Public freight motor vehicles tax (intra-state).
4. Public passenger motor vehicles tax (intra-state).
5. Motor vehicles registration fees.
6. Motor vehicles titling tax.
7. Admissions and amusement tax.
8. Alcoholic beverages excise taxes.
9. Motor vehicles fuel tax.
10. Sales tax.
11. Use tax.
12. Tax on commissions of Executors and Administrators.
13. Maryland Estate Tax.

⁴³ There is no statutory provision requiring the filing of written opinions by the State Tax Commission. When a taxpayer is aggrieved by and appeals from a decision of the Commission in the exercise of its original jurisdiction, however, the Commission must certify to the Court a statement of all facts considered by it in rendering its decision. ANN. CODE MD., Art. 81, Sec. 194(b) (Supp. 1947), as amended by Md. Laws 1949, c. 412. Written opinions are invariably filed in matters relating to assessment of public service corporations and in proceedings involving a claim for exemption from a tax or taxes. In other cases, written opinions usually are filed only when a question of law is involved.

⁴⁴ ANN. CODE MD., Art. 81, Sec. 247 (1939).

14. Direct and collateral inheritance taxes.
15. Daily license fee (racing).
16. Tax on pari-mutual wagering.
17. Outdoor advertising tax.

Taxpayers who have paid taxes based upon assessments entered against them may bring their case before the State Tax Commission by filing a claim for refund. This procedure is extremely limited if the question involves a direct tax imposed on real or personal property.⁴⁵ For other taxes the procedure is more flexible. In such cases, a claim for refund may be filed with the agency which collected the tax on the ground that it was erroneously or mistakenly paid.⁴⁶ From action of the agency with which the refund claim was filed, appeals may be taken to the State Tax Commission by either the taxpayer or the State Comptroller.⁴⁷

A party aggrieved by any action of the State Tax Commission may appeal to the lower State courts and ultimately to the Court of Appeals. The procedure to be followed in such appeals depends, however, upon the type of case which was heard by the Commission. If the case before the Commission was an appeal from an assessment made by another agency, appeals from the Commission are upon questions of law only and the Commission's findings of fact are conclusive upon the courts.⁴⁸ On the other hand, if the case before the State Tax Commission was a protest to a tentative assessment made by the Commission itself, appeals may be taken to the courts on questions of both law and fact and the privilege is afforded

⁴⁵ ANN. CODE MD., Art. 81, Sec. 161 (Supp. 1947). See *Wasena Housing Corp. v. Levay*, 188 Md. 383 (1947).

⁴⁶ ANN. CODE MD., Art. 81, Sec. 162A (Supp. 1947).

⁴⁷ ANN. CODE MD., Art. 81, Sec. 162C (Supp. 1947). This provision is inapplicable to the Retail Sales Tax and the Maryland Use Tax for which exclusive remedies are provided. Claims for refund of these taxes must be filed with the Comptroller. A taxpayer dissatisfied with the final determination of that official may take an appeal directly to the Circuit Court of the County where its business is conducted or to the Baltimore City Court if it conducts its business in Baltimore. Such appeal is limited to questions of law. Further appeal may be taken to the Court of Appeals by a party in interest. ANN. CODE MD., Art. 81, Secs. 283-288, 335 (Supp. 1947).

⁴⁸ ANN. CODE MD., Art. 81, Sec. 194(a) (Supp. 1947), as amended by Md. Laws 1949, c. 413.

to place additional evidence in the record before the lower court.⁴⁹

If the case before the Commission is an appeal based upon a rejected claim for refund, the law states that interested parties "... may appeal to the Courts in the same manner as appeals are permitted from any other action of the State Tax Commission."⁵⁰ Since there are two distinct types of appeals from actions of the State Tax Commission, it is not clear what procedure should be followed in refund cases.

The procedural aspects of Maryland tax law are totally devoid of a uniform pattern or a systematic approach. As stated in the first section of this report, procedure before the State Tax Commission has suffered immeasurably by reason of improper combination of judicial and administrative functions in that Commission. The methods of bringing tax matters before the Commission may vary with types of taxes involved and with types of cases presented. A somewhat similar situation prevails regarding methods by which a taxpayer may appeal from a decision of the Commission to lower courts and ultimately to the Court of Appeals.

In many of the more progressive states, tax procedure and practice have been standardized and simplified by establishment of tax courts or boards of tax appeal.⁵¹ The leg-

⁴⁹ ANN. CODE MD., Art. 81, Sec. 194(b) (Supp. 1947), as amended by Md. Laws 1949, c. 413. While the language of this provision is extremely broad its scope has been narrowed, as interpreted by the Court of Appeals. In *State Tax Commission v. Chesapeake & Potomac Tel. Co.*, 66 A. 2d 477 (1949), and *Seaboard Commercial Corporation v. State Tax Commission*, 181 Md. 234 (1942), both involving questions of the weight to be given certain factors required to be considered by the State Tax Commission in assessing property of corporations, the Court of Appeals held that a court reviewing a decision of the Commission under section 194(b) must limit its review to whether the required factors were in fact considered by the Commission, that the weight given individual factors was not subject to review.

⁵⁰ ANN. CODE MD., Art. 81, Sec. 162C (Supp. 1947).

⁵¹ Eight states and the District of Columbia now maintain tax appeal boards. States having such boards are as follows: Kentucky, "Kentucky Tax Commission", KY. REV. STAT. c. 131 (Baldwin, 1943 and Cum. Supp. 1950); Louisiana, "Board of Tax Appeals", LA. GEN. STAT. §8506.11 *et seq.* (Dart, Cum. Supp. 1949); Massachusetts, "Appellate Tax Board", ANN. LAWS MASS. c. 58A, §1 *et seq.* (Michie, 1945 and Cum. Supp. 1949); Michigan, "Board of Tax Appeals", MICH. STAT. ANN. §7.657(7) *et seq.* (Rice, 1950); Minnesota, "Board of Tax Appeals", MINN. STAT. ANN. c. 271 (West, 1947); New Jersey, "Division of Tax

islatures creating these agencies have sought to provide fair and expeditious handling of appeals in tax matters through agencies composed of disinterested experts. To ensure independence for both boards and board personnel, these *quasi* judicial bodies have been constituted either as an independent division of the department of revenue or, more frequently, as an independent agency in the executive branch of the government.⁵² On most of these state boards, no more than a bare majority of members may be affiliated with the same political party. The laws of several states require that one or more board members be lawyers; Louisiana and New Jersey make provision for membership of a certified public accountant. Only in Kentucky does an appellate tax body have assessment functions.

The size of membership on the several boards of tax appeals ranges from one in the District of Columbia to seven in New Jersey. Appointments to the boards are made by the governors. Compensation for board members varies from \$4,500 per annum in Kentucky to \$8,000 per annum in Massachusetts and New Jersey, the chairman or president of the board usually receiving additional remuneration. Tenure of office is from four to six years.

States maintaining departments of taxation or revenue have vested in such departments responsibility for administering all or substantially all state tax laws. As a correlative measure, these states (and the District of Columbia) have vested in their boards of tax appeal jurisdiction to review all final determinations of the department as to assessments, valuations and other final orders, and to affirm, reverse or modify such orders and determinations. In addition, these

Appeals" in Department of Taxation and Finance, N. J. STAT. ANN. §52:27B-52 *et seq.* (West, Cum. Supp. 1949); Ohio, "Board of Tax Appeals", OHIO GEN. CODE ANN. §1464 *et seq.* (Page. 1946 and Cum. Supp. 1949); and Wisconsin, "Board of Tax Appeals", WIS. STAT. c. 73 (1949). Provision for the Board of Tax Appeals of the District of Columbia is found in D. C. CODE, tit. 47, §2401 *et seq.* (1940).

⁵² The single exception to this practice is found in Kentucky, where the Commissioner of Revenue is *ex officio* executive head of the Kentucky Tax Commission, KY. REV. STAT. §131.020 (Baldwin, 1943).

boards in each instance have been given jurisdiction to review local assessments and valuations. While in a few instances alternative provision is made for court review of departmental determination, the trend appears established that no alternative procedure be permitted.⁵³

Proceedings before the boards are either *de novo* or upon the record made before the department as supplemented by testimony before the board. With limited exceptions, hearings before the boards are of formal character and based upon formal pleadings. Upon reaching a decision, the boards in each instance are required to file written findings of fact and conclusions of law. The boards are without exception vested with appropriate rule-making and inquisitorial powers.

In the jurisdictions under consideration, decisions of appeal tax boards are conclusive only to the extent that further appeal to a court (or other appropriate action) is not taken within the time limits specified. In several states, appeal may be taken to a lower court of the state, with right of further appeal to the highest court. In Massachusetts, Minnesota, Ohio, the District of Columbia, and Wisconsin, appeal is taken from the board directly to the highest court of the state.⁵⁴

The Commission recommends that a Maryland Tax Court be substituted for the State Tax Commission. The functions and characteristics of this court should be as follows:⁵⁵

1. The Court should be composed of not less than three nor more than five members appointed by the Governor for

⁵³ For example, see MINN. STAT. ANN. §271.09 (West, 1947).

⁵⁴ Appeals from the Board of Tax Appeals of the District of Columbia are taken directly to the United States Court of Appeals for the District of Columbia which is the highest "appellate" court for that jurisdiction. Further review may be had only by the granting of a writ of certiorari by the United States Supreme Court.

⁵⁵ The "characteristics" of the Maryland Tax Court contained in the text do not include a recommendation concerning the salaries which should be paid to the members of the Court. The Commission believes this to be a matter which should be left solely to the Executive and to the General Assembly. It should be observed, however, that while the payment of adequate salary does not always ensure against incompetency in office, the payment of inadequate compensation leads to incompetency.

the tenure now provided for the members of the State Tax Commission.

2. Not more than a bare majority of the members of the Court should be members of the same political party.

3. At least two members of the Court should be members of the Maryland Bar.

4. The Court should provide reporting services at all hearings, and copies of the record should be furnished to the parties in the same manner and upon the same conditions that records are furnished in proceedings in the State law or equity courts.

5. The Court should maintain dockets and pleadings files. Pleadings before the Court should consist of a petition to be filed by the moving party stating the nature of the case and the question or questions to be reviewed by the Court. The responding party should be required to file such pleadings as the Court may direct by rule.

6. Proceedings before the Court should be *de novo* and should be conducted in a manner similar to that in State equity courts. The Court should be empowered to adopt and promulgate rules of procedure in matters for the determination by the Court.

7. The Court should file written findings of fact and conclusions of law in all cases.

8. Persons of the following classes should be admitted to practice before the Court:

- (a) Any person appearing and acting for himself, or for a partnership of which he is a member, or for a corporation of which he is an officer.
- (b) Attorneys at law who are admitted to practice before the Court of Appeals of Maryland.
- (c) Certified public accountants who are duly qualified under the laws of Maryland.

9. The principal office of the Court should be in the City of Baltimore, but the Court should schedule as many cases as possible in the county seats for convenience of litigants before it.

10. A majority of the Court should constitute a quorum.

11. The Court should be permitted, at the request of any party in interest, to submit to a court of law issues of fact to be tried before a jury. This procedure should be limited strictly and under no circumstances should it be made applicable to questions of valuation of real or personal property for ordinary tax purposes.

In addition to the recommendations made above, the Commission suggests that the present members of the State Tax Commission be continued as members of the Maryland Tax Court until the expiration of their terms. The Commission has no reason to believe the work load of the proposed Tax Court will greatly exceed that now carried by the State Tax Commission. As a consequence, it is doubted that service on the Court will involve the full time of members. Whether the Court should consist of three or five members primarily involves a problem of local representation which we believe should be resolved by the General Assembly.⁵⁶

As stated above, the Commission recommends that the Maryland Tax Court hear appeals involving all property assessment cases made either by local assessors or by the Department of Revenue. Since assessment in such cases constitutes a lien against the property, no bond should be required from a taxpayer as a prerequisite to an appeal to the Tax Court.⁵⁷ A bond should be required, however, as a pre-

⁵⁶ Should a three member Court be established, we believe the geographical representation of the State Tax Commission should be followed. See ANN. CODE MD., Art. 81, Sec. 167 (1939). If the General Assembly determines broader representation more desirable, the Commission believes that provided for the Court of Appeals sound and adequate. See MD. CONST., Art. IV, Sec. 14, as amended by Md. Laws 1943, c. 772 and ratified at November election, 1944.

⁵⁷ ANN. CODE MD., Art. 81, Sec. 71A (Supp. 1947). The United States Supreme Court has indicated the lien may attach on the date of finality. *Magruder v. Supplee*, 316 U. S. 394 (1942).

requisite to an appeal from assessments made for other State taxes.

In cases other than those involving real or personal property, the State might be placed at a disadvantage unless it collected a major portion of its revenues when due. Past experience has shown, for example, that income taxes may be difficult to collect even after a Court of Appeals decision sustaining the levy. The possible uncollectibility of taxes which do not directly involve property undoubtedly explains the lack of provisions for permitting appeal to the State Tax Commission from assessment of such taxes, and the requirement that taxpayers should sue for refunds in such cases.⁵⁸

The danger of uncollectibility in permitting appeals from assessment of taxes not levied against property can largely be removed by the requirement that the taxpayer wishing to appeal file a bond equal in amount to the proposed assessment. The Commission recommends, therefore, that appeals from assessment of taxes other than those levied against property should be accompanied by the filing of a bond equal in amount to the asserted deficiency.

The Commission recommends that no taxpayer be allowed to appeal to the Maryland Tax Court until he has exhausted his administrative remedies before the board or agency which entered the original assessment. Without such a requirement a taxpayer might completely bypass the agency which entered the original assessment and take his case directly to the Tax Court. This procedure would not be in keeping with sound administrative practice and would, moreover, preclude the opportunity of adjusting or settling tax matters with the assessing authority. Practice has demon-

⁵⁸ Doubtless this situation prompted the legislature to include lien provisions in the Retail Sales Tax Act and the Maryland Use Tax. By ANN. CODE MD., Art. 81, Sec. 278(b) (Supp. 1947), as amended by Md. Laws 1949, c. 465, the Sales Tax, and all increases, interests and penalties thereon constitute a lien upon the property of any person liable to pay the tax after notice has been given that tax has become due and payable. The Maryland Use Tax contains an identical provision. ANN. CODE MD., Art. 81, Sec. 329(b) (Supp. 1947), as amended by Md. Laws 1949, c. 594.

strated that much may be accomplished in disposing of tax cases through conferences held with tax assessors.⁵⁹ The Commission believes this practice should not be abandoned.

Jury trials are seldom, if ever, had in tax cases. It is extremely doubtful that such trials are required by any constitutional provision. Moreover, the function of assessing property for the purposes of ordinary taxation is essentially not a judicial function and cannot be made such by being imposed upon the courts.⁶⁰

In a limited number of tax cases, however, it may be that the parties will desire issues of fact to be tried by a jury. Examples of such cases include questions relating to transfers made in contemplation of death (for inheritance tax purposes) and problems involving the maintenance of a place of abode (for income tax purposes). For this reason, the Commission has recommended that the Maryland Tax Court be permitted at the request of any party in interest to submit to a court of law issues of fact to be tried by a jury. This recommendation should be effectuated by a statute which limits strictly the right to submit issues of fact in tax cases to courts of law and under no circumstances should the procedure be made applicable to questions of valuation of real or personal property for ordinary tax purposes.

While the Commission's recommendation that appeals from the Maryland Tax Court should be allowed directly to the Court of Appeals is new in Maryland tax practice, the Commission believes it is necessary under the circumstances. As stated above, it is recommended that the Maryland Tax Court be conducted as equity courts are conducted in this State. If such a procedure is followed by the Tax Court, it would be a needless expenditure of time and money to require interested parties to take their cases to an intermediate appellate court before being given the privilege of being

⁵⁹ Administrative conferences have proved useful to both taxpayer and assessing authority. In many instances, conference discussion has spared all parties time, money and needless litigation.

⁶⁰ *Baltimore City v. Bonaparte*, 93 Md. 156 (1901).

heard by the Court of Appeals. Under the procedure recommended by the Commission, moreover, the rights of all interested parties can be completely and promptly protected by the Court of Appeals. Since no useful purpose would be served by permitting appeals from the Maryland Tax Court to the lower State courts, the Commission recommends that direct appeals be permitted in tax cases to the Court of Appeals.⁶¹

⁶¹ In making this recommendation the Commission is not unmindful of the fact that some additional work may be required of the Court of Appeals. However, the recommendation made above should be effectuated by a carefully worded statute which would insulate the Court of Appeals against frivolous and unwarranted appeals in tax cases. For example, decisions of the Maryland Tax Court on questions of valuation should be binding on appeal unless erroneous legal principles were employed. In addition, the Court of Appeals should be permitted to affirm decisions of the Maryland Tax Court if it finds that those decisions were based upon substantial evidence. This is a familiar test and has been adopted by the United States Supreme Court in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197 (1938) and embodied in the Federal Administrative Procedure Act, 5 U.S.C.A., §§1001-1011, particularly §1009(e). See *Administrative Procedure Act, Legislative History*, SEN. DOC. NO. 248, 79th Cong., 2d Sess., p. 370. See also ATT'Y. GEN. MAN. AD PROC. ACT 107 *et seq.* (1947).

ALCOHOLIC BEVERAGES TAXES

STATE TAXATION OF ALCOHOLIC BEVERAGES

Alcoholic beverages taxes are levied for the benefit of both the State and its localities.¹ Approximately five per cent of the net tax receipts of the State for the fiscal year 1949 was derived from alcoholic beverages taxes. Principally responsible for these substantial revenues amounting to \$5,797,483 are the excises imposed upon beer, wine and distilled spirits and other alcoholic beverages sold for consumption in Maryland. The rates of these taxes are respectively, three cents per gallon, twenty cents per gallon and \$1.25 per gallon.

In addition to the administration of these excise taxes, the Comptroller is charged with responsibility for issuance and supervision of several licenses.² Manufacturers³ and wholesalers⁴ of alcoholic beverages in this State are required to obtain annual licenses before engaging in business. State-wide Class E and F licenses authorizing retail sales of alcoholic beverages aboard steamboats and trains are also issued by the Comptroller.⁵

For the fiscal year 1949, net receipts from excise taxes accounted for 97.96%⁶ of the net receipts of the State from alcoholic beverages taxes; net receipts from license and permit fees amounted to 2.01% of such receipts.⁷ All revenues are paid into the general funds of the State. Net revenues from these taxes for the last three fiscal years are as follows:

¹ In addition to taxes imposed by Public General Laws, Baltimore City and Baltimore County, under authority of Md. Laws Spec. Sess. 1947, c. 1, and Md. Laws 1949, c. 765, respectively, now impose excises on distilled spirits in the amount of fifty cents per gallon. Authority for these measures expires in 1951.

² The Comptroller administers several permits that also relate to alcoholic beverages. ANN. CODE MD., Art. 2B, Sec. 3 (Supp. 1947).

³ ANN. CODE MD., Art. 2B, Sec. 4 (Supp. 1947).

⁴ ANN. CODE MD., Art. 2B, Sec. 5 (Supp. 1947).

⁵ ANN. CODE MD., Art. 2B, Secs. 10, 15, 20, 21 and 43 (Supp. 1947).

⁶ 1949 *Report*, ALCOHOLIC BEVERAGES DIVISION, p. 7.

⁷ *Ibid.*

<i>Year</i>	<i>Net Revenues</i>
1949	\$5,797,483.
1948	5,877,971.
1947	6,621,585.

Collection of Excise Taxes

Section 114 of Article 2B levies a tax on wine at the rate of twenty cents per gallon, and on distilled spirits and other alcoholic beverages at the rate of \$1.25 per gallon.⁸ A further provision of this section requires that these taxes be paid to the Comptroller, by the manufacturer, wholesaler or dispensary before such beverages are removed from the place of business or warehouse of the taxpayer for delivery to any retail dealer in the State (except Classes E and F).

Payment of wine and liquor taxes is evidenced by excise stamps purchased from the Comptroller and required by statute and regulation to be affixed to wine and liquor containers before delivery to retail dealers in Maryland. To avoid labor costs incident to the opening of cases on the premises of the wholesaler and to minimize breakage and pilferage which frequently accompany such an operation, it has become usual practice for the wholesaler to forward stamps to the distilleries or wineries to be affixed during bottling operations. This practice requires the purchase in advance of tax liability of sufficient stamps to cover inventory on hand, stamps in transit and those awaiting bottling operations at distillery or winery, and involves an average prepayment of taxes estimated to be approximately \$800,000.⁹ The taxpayers subjected to this tax complain that the method of collection works undue hardship upon the industry and is discriminatory and unfair, in that it requires payment of taxes long before they are due. The Commission agrees that an inequity exists in the operation of the tax.

⁸ ANN. CODE MD., Art. 2B, Sec. 117 (Supp. 1947), makes provision for payment of taxes on fractional gallon containers.

⁹ For the fiscal year 1949 the average figure was \$881,956. The average for the first nine months of fiscal 1950 was \$777,199.

The prepayment provisions of Sections 114 and 117 were designed to prevent tax evasion. Procedures for minimizing tax evasion were undeveloped and untried when such provisions were enacted in 1933.¹⁰ Now officials responsible for administering these taxes have discovered that no difficulty is encountered in collecting the tax from Class E and F licensees who are not required to pay the tax until twenty-five days after the close of the tax period, which is each calendar month. Also, they have had no difficulty in collecting the three cents per gallon tax on beer¹¹ from manufacturers selling beer for consumption in this State. Local breweries are required to file a statement under oath by the tenth day of the calendar month following sale for local consumption. The tax is payable at that time.

Based on the experience cited above, we believe that a method of collection which defers liability for wine and liquor taxes until after sale to retailer should be adopted. Satisfactory collection of such taxes could be ensured through issuance of stamps on a credit basis, payment for which should be deferred until after sale of beverages taxed. The Alcoholic Beverages Division has informed the Commission that this change in the method of collection is entirely feasible, and that, while such a change would require a few additional hours on each audit, present personnel of the Division could perform the work required.

Recommendation

We recommend that Sections 114 and 117 of Article 2B be amended to defer time for payment of taxes on wine and liquor until the tenth day of the calendar month following sale of such beverages. Payment should be accompanied by a statement under oath on forms prescribed by the Comptroller listing all wine and liquor sold or delivered to retail dealers in Maryland during the month. This legislation should require affixing of excise stamps evidencing payment

¹⁰ Md. Laws Spec. Sess. 1933, c. 2, sec. 37.

¹¹ ANN. CODE MD., Art. 2B, Sec. 115 (Supp. 1947).

of taxes to containers before removal from place of business or warehouse of manufacturer, wholesaler or dispensary for delivery to a retail dealer in Maryland, and the Comptroller should be authorized to issue excise stamps on a credit basis.

To ensure payment for excise stamps, we recommend that Section 121(c) of Article 2B be amended to require every manufacturer or wholesaler selling or delivering wine and liquor to retail dealers in Maryland to file with the Comptroller a bond in the minimum penalty of \$5,000, provided that should excise stamps in excess of such sum be issued on credit to a manufacturer or wholesaler, the manufacturer or wholesaler may be required by the Comptroller to file an additional bond in an amount not less than the difference between \$5,000 and the maximum value of excise stamps issued on credit to the manufacturer or wholesaler.

Adoption of these recommendations will not involve revenue loss for the State, but will result in deferral of payment of the taxes. Since the wine and liquor industries presumably have on hand approximately a three-months' supply of excise stamps and the proposed legislation would involve an average twenty-five day deferral period, budgetary estimates for the year of adoption must be accommodated to an artificial and temporary revenue loss of approximately one million dollars. This artificial loss will, of course, be encountered only during the year of adoption.

Beer and Wine Security Bonds

Subsections (a) and (b) of Section 121 of Article 2B require every manufacturer or wholesaler engaged in selling or delivering beer or wine to retail dealers in Maryland to file with the Comptroller a bond in the minimum penalty of \$1,000 conditioned on, *inter alia*, prompt payment of taxes. If the beer tax paid in any one month by a manufacturer or wholesaler should exceed the amount of the bond, the Comptroller is authorized to require the filing of an additional bond in an amount not less than such excess, provided that

the total amount of bond required of any manufacturer or wholesaler shall not exceed the sum of \$20,000.

The monthly taxes paid by each of two large breweries in this State are substantially in excess of \$20,000. As a consequence, State revenues are, in these instances, not afforded adequate protection. When these provisions were enacted, a bond in the sum of \$20,000 probably afforded sufficient, albeit inflexible, protection to the State. Such is no longer the case.

Recommendation

We recommend that Subsection (b) of Section 121 of Article 2B be amended to authorize the Comptroller to require any manufacturer or wholesaler of beer or wine selling or delivering such beverages to retail dealers in Maryland and paying in excess of \$1,000 in beer or wine taxes in any one month to file an additional bond in an amount not less than the full amount of such excess.

Manufacturer's and Wholesaler's Licenses

The manufacturer's and wholesaler's license provisions¹² have presented two difficulties to the Commission. *First*, they do not fulfill the function intended by the General Assembly. *Second*, the holder of such a license is charged the same annual fee regardless of whether he exercises one or many of the valuable privileges conferred by such license.

Fees from licenses and permits are not intended to augment the revenues of the State. Such fees are intended primarily to defray the expenses incurred by the Comptroller and the State Appeal Board in discharge of duties imposed by the alcoholic beverages laws.¹³ Initially, such fees were adequate to cover these expenses, but now the costs of administering the alcoholic beverages laws exceed the fees derived from licenses and permits, as indicated below:

¹² ANN. CODE MD., Art. 2B, Secs. 4 and 5 (Supp. 1947).

¹³ Md. Laws Spec. Sess. 1933, c. 2, sec. 14. This Section is now codified as ANN. CODE MD., Art. 2B, Sec. 51(v) (Supp. 1947).

<i>Year</i>	<i>Fees (Net)</i>	<i>Expenses</i>	<i>Deficit</i>
1950	\$120,000 (Est.)	\$159,381 (Est.)	\$39,381 (Est.)
1949	119,157	150,255	31,098
1948	126,836	137,199	10,363
1947	140,821	122,555	18,266 (Surplus)

Many privileges are conferred by the manufacturer's license, but the fee charged for such license remains the same regardless of the number of privileges actually exercised by the licensee. The annual fee for this license is \$1,000.¹⁴

Any holder of a license is entitled to establish and operate in Maryland a plant for distilling, rectifying, blending, brewing, fermenting or bottling of alcoholic beverages. In addition to these substantial privileges, a licensee may import and conduct a wholesale business in alcoholic beverages. No holder of the general manufacturer's license, however, actually exercises all of the privileges conferred by such license, and many exercise only two or three. We believe it to be unfair and discriminatory to exact from a licensee exercising only a limited number of privileges the same fee assessed against those exercising a substantially greater number.

The inequity of the general manufacturer's license is emphasized by the fact that a State-wide wholesaler's license, which authorizes a holder thereof to exercise only one of the many privileges conferred by the manufacturer's license, involves annual payment of a fee of \$1,000. This inequity was corrected partially by the General Assembly in 1939 by the enactment of a provision permitting wholesalers of beer only to procure a less expensive license.¹⁵ The fees for

¹⁴ The Comptroller also issues a limited manufacturer's license which authorizes the holder to manufacture and bottle wine from grapes grown in Maryland and to sell such wine to any license holder. Annual fee: \$50. ANN. CODE MD., Art. 2B, Sec. 4(d) (Supp. 1947).

¹⁵ Md. Laws 1939, c. 775, sec. 3(b), now codified as ANN. CODE MD., Art. 2B, Sec. 5(d) (Supp. 1947). This provision was also designed to facilitate collection of the State excise on beer. Prior to 1939 the local retail off-sale license for beer authorized retailers of the package store type selling beer only to conduct a wholesale beer business. To ensure better enforcement of the beer excise, local licensing of beer wholesalers was eliminated, and the provision herein considered was enacted.

this license are based on two factors: the number of counties in which the wholesaler conducts his business and the population of such counties.

The Commission requested the Alcoholic Beverages Division to submit a schedule of licenses for manufacturers and wholesalers that would reflect more equitably the specific value of each of the many privileges conferred by such licenses, and also make provision for sufficient additional revenue to defray fully the costs of administering the alcoholic beverages laws. The proposed schedule of licenses and the fees chargeable therefor are set forth below. A descriptive code of these licenses and an indication of their relationship to existing licenses are included.

<i>Code</i>	<i>Proposed State-Wide Licenses</i>	<i>Proposed Fee</i>	<i>Present Fee</i>	<i>Includes</i>
SD	Distillery (Mfg. & Sale in bulk only)....	\$1,500.	\$1,000.	SD-R-BWS
BM	Brewery (Mfg. & Sale to Wholesalers) ..	1,000.	1,000.	BM-B
Y	Winery (Includes bottling & Sales to Wholesalers)	500.	1,000.	Y-BW
Y(Ltd)	Winery (Ltd. to grapes grown in Md. inc. bottling and sales to licensees)	50.	50.	Y(Ltd)
R	Rectifier (Includes acquisition of bulk spirits, blending and sales to wholesalers)	500.	1,000.	R-WS
BWS	Beer, Wine & Spirits (Sales to licensees and permit- tees)	1,500.	1,000.	BWS
WS	Wine & Spirits (Sales to Licensees and Per- mittees)	1,250.	1,000.	WS-B
BW	Beer & Wine (Sales to licensees and permit- tees)	1,000.	1,000.	BW-S
B	Beer (Sales to licensees and permit- tees)	750.	1,000.	B-WS

Recommendation

The Commission recommends that Section 4 and Sub-sections (a), (b), and (c) of Section 5 of Article 2B be repealed, and that legislation be enacted adopting the substance of the State-wide manufacturer's and wholesaler's license proposals set forth above. The Commission recommends further that Sub-section (d) of Section 5 of Article 2B be amended to increase the annual fees for the beer wholesaler's license from \$100 to \$125 in counties of 18,000 population or less; from \$150 to \$175 in counties of more than 18,000 population but less than 35,000 population; and from \$200 to \$225 in counties of more than 35,000 population and in Baltimore City. Should these proposals be adopted, Sub-section (f) of Section 5 should be amended to conform to such legislation.

It is believed that adoption of these recommendations would provide a more equitable system of licensing for both the alcoholic beverages industry and the State. Further, the relatively slight increase in license fees would permit the Comptroller to defray the expenses of administering the alcoholic beverages laws in the manner intended by the General Assembly.

LOCAL TAXATION OF ALCOHOLIC BEVERAGES

Retail Licenses:

Retail dealers in alcoholic beverages (except Classes E and F) are licensed by the several counties, Baltimore City and the City of Annapolis. An investigation of the laws governing these licenses has disclosed disparity in fees charged for licenses of the same class among the subdivisions, and, to a lesser degree, a disparity in rights of appeal from decisions of the licensing authorities. However, no disparities or instances of unfairness of great magnitude have been

found. The Commission believes these problems are essentially local in nature. Interference by it would be inconsistent with the State's long tradition of local option and control over sale and consumption of alcoholic beverages by localities.

Excise Taxes:

Three localities impose excises on alcoholic beverages. In Garrett County beer is taxed at the rate of two cents per twelve ounce container and five and one-third cents per thirty-two ounce container;¹⁶ Baltimore City and Baltimore County have levied taxes of fifty cents per gallon on distilled spirits.¹⁷ Although the Garrett County tax is of permanent character, those levied by the other subdivisions are of emergency nature and expire at the end of 1951.

While imposts of this character have offered a remunerative and attractive source of revenue to the localities, we believe that such revenue may be raised only at the price of decreasing State receipts from alcoholic beverages taxes and also revenues from other taxes paid by the alcoholic beverages industry. It has been demonstrated to the Commission that when alcoholic beverages taxes are increased, either locally or by the State, taxable consumption suffers.¹⁸

Alcoholic beverages taxes have constituted an important and dependable source of revenue to the State and should not be jeopardized through the imposition of local levies. To protect this significant source of revenue we believe it to be essential that such source be preempted to the exclusive benefit of the State. Because of the fiscal dependence of the three subdivisions concerned upon these taxes, we are unwilling to recommend their repeal at this time. We do, however, strongly

¹⁶ ANN. CODE MD., Art. 2B, Sec. 116 (Supp. 1947).

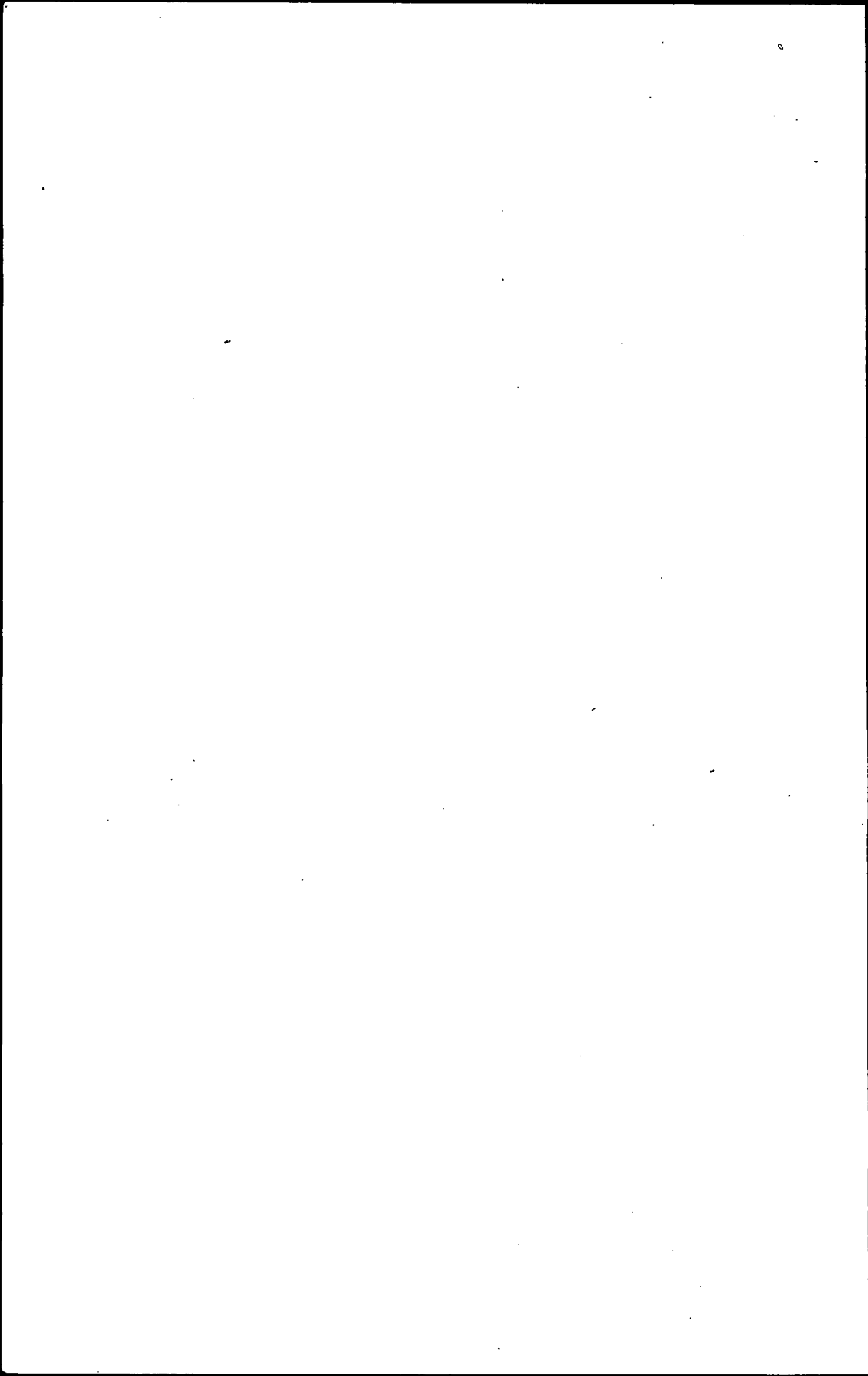
¹⁷ See f.n. 1.

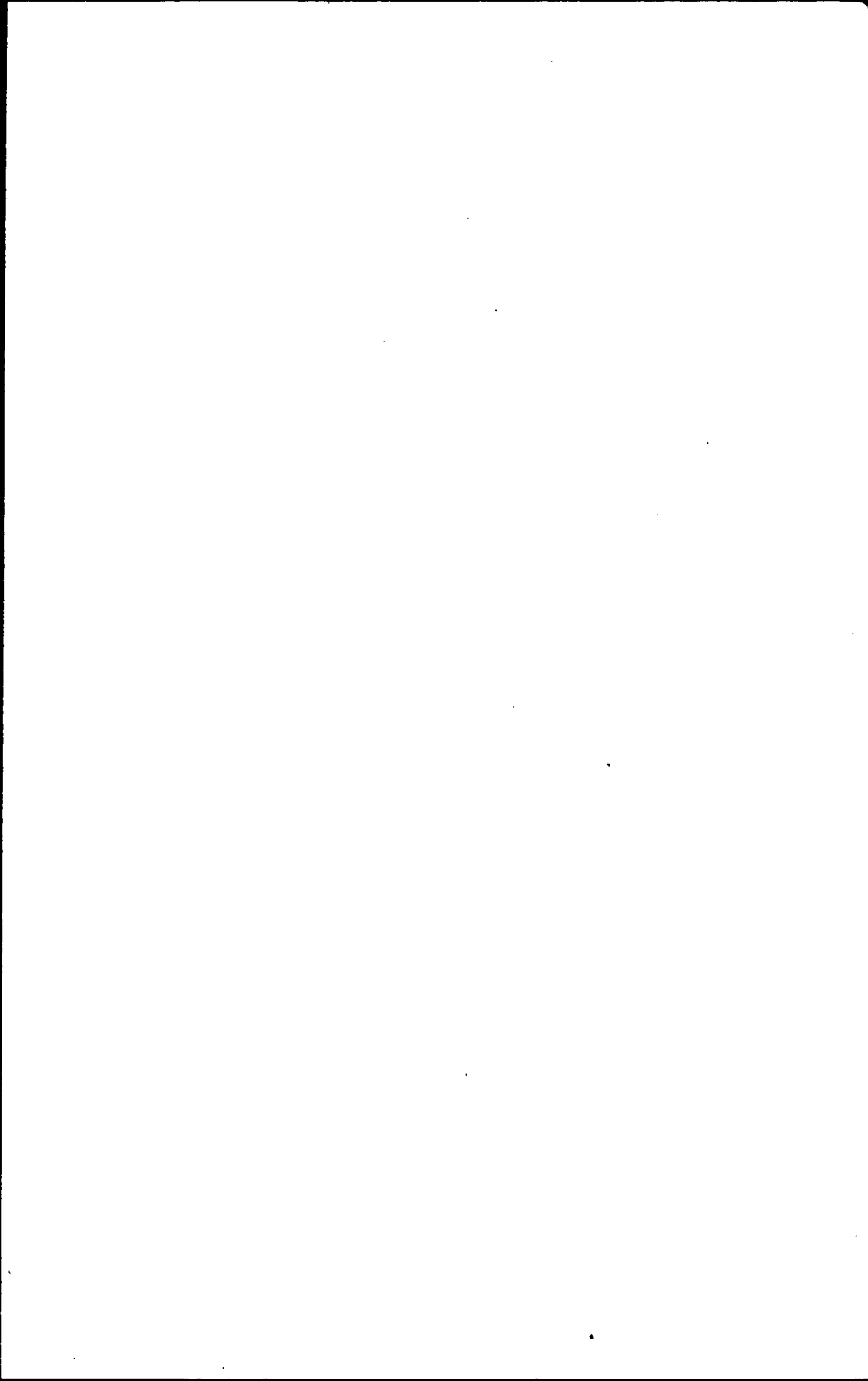
¹⁸ The Commission has not studied the question of desirability or undesirability of liquor consumption, since its task is restricted to a study of the equitable application of present taxes wherever they are levied. To avoid unnecessary dilution of State sources of revenue, however, the question of taxable consumption has been considered.

recommend that the imposition of local excise taxes upon alcoholic beverages be rigidly limited to those subdivisions now levying such measures.

Respectfully submitted,

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